

**Southern Regional Model United Nations**  
***Preserving Fundamental Human Rights:***  
***Our Responsibility to Protect***  
**April 9-11, 2015**  
**Charlotte, NC**  
**[icc\\_charlotte@srmun.org](mailto:icc_charlotte@srmun.org)**



Dear Delegates,

It is an honor to welcome you to the SRMUN Charlotte 2015 Conference and to the International Criminal Court (ICC). My name is Tiffany Soma and I will be serving as the Director of the ICC along with my esteemed Assistant Director, Kayla Bello. We have worked diligently on composing this background guide in order to provide you with a document that will not only heighten your awareness of International Criminal Law (ICL) in the context of the selected cases, but will also assist you in preparation for the conference.

The ICC, often referred to as “the Court,” was established by the *Rome Statute* and became fully operational in 2002. It is the first permanent, treaty based, international criminal court established in order to try cases against individuals accused of the most serious crimes within the international community. Independent from the United Nations, the ICC decides if the accused should be acquitted or convicted. If convicted, sentencing occurs, which may include imprisonment and reparations to the victims. The ICC is a crucial mechanism for strengthening the fight to end impunity, and more specifically, the failure to punish grave breaches of international humanitarian law.

Keeping in mind the jurisdiction of the International Criminal Court and the conference theme “*Preserving Fundamental Human Rights: Our Responsibility to Protect*,” we have chosen the following cases to be decided by the Court during this year’s conference:

- Case I. Situation in Darfur: The Prosecutor v. Ali Muhammad Ali Abd-Al Rahaman (Ali Kushayb)
- Case II. Situation in the Republic of the Ivory Coast: The Prosecutor v. Simone Gbagbo

This committee presents an extraordinary opportunity for delegates who have a passion for mock trial and conflict arbitration to simulate cases of the ICC. For the purposes of our simulation, both cases will be considered within the *Trial Division* of the Court and delegates will have the opportunity to serve in one position as a Prosecutor, Defense Counsel, Victim’s Advocate, or Judge. Delegates serving as a Prosecutor, Defense Counsel, or Victim’s Advocate will present arguments to the Court and Judges will objectively reach decisions on each of the cases throughout the simulation. Rather than writing resolutions or reports during committee sessions, you will be responsible for drafting judgments and opinions in addition to decisions on reparations. Due to the distinct nature of the ICC and the ongoing developments, certain elements of the ICC trial process have been altered for the purposes of this simulation. **As such, an Addendum with additional guidance on the committee will be published shortly after this background guide on [www.srmun.org/charlotte](http://www.srmun.org/charlotte).**

Each delegation is required to submit a “position paper” based on their assigned roles in the Court. This committee is uniquely different from prior simulations held at SRMUN, requiring a different style of position papers: Judges will submit preliminary opinions, Prosecutors will submit indictments, and the Defense Counsel and Victims’ Representatives will submit legal briefs. More detailed guidelines on position papers along with the Rules of Procedure for the ICC will be published in the ICC Addendum found on the SRMUN website at [www.srmun.org/charlotte/](http://www.srmun.org/charlotte/). **All ICC position papers MUST be submitted by Friday, 20 March 2015 at 11:59 p.m. EST via the online submission system on the SRMUN website.**

This background guide will serve as a strong foundation for your research; however, it should not be utilized as a complete means for the selected cases. This challenging and exclusive committee will require delegates to conduct extensive research beyond the parameters of this background guide. Delegates will be held accountable to a high level of engagement and participation during the conference, thus, requiring a thorough understanding of the Court and its proceedings, in addition to logical rigor and superior debating ability. Finally, we would like to congratulate you on being appointed to the Court and we send you our best regards in preparation for SRMUN Charlotte 2015! Please feel free to contact Director-General Devin McRae, Kayla, or myself should you have any questions during your preparation.

Tiffany Soma  
Director  
[icc\\_charlotte@srmun.org](mailto:icc_charlotte@srmun.org)

Kayla Bello  
Assistant Director  
[icc\\_charlotte@srmun.org](mailto:icc_charlotte@srmun.org)

Devin McRae  
Director-General  
[dg\\_charlotte@srmun.org](mailto:dg_charlotte@srmun.org)

## History of the International Criminal Court (ICC)

*"There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance."*<sup>1</sup>

—Benjamin B. Ferencz, former Nürnberg prosecutor

On 17 July 1998, the *Rome Statute* established the International Criminal Court (ICC) as a permanent international court to investigate, prosecute, and try cases against individuals accused of genocide, crimes against humanity, war crimes, or crimes of aggression.<sup>2</sup> Although the idea of such a body dates back to the First World War, it was in the aftermath of World War II that the first international organs of criminal justice were set in place—the Nuremberg (1945–46) and Tokyo (1946–48) International Military Tribunals.<sup>3</sup> These tribunals were established to punish Nazi leaders and physicians in Germany, as well as the Japanese war criminals who led their soldiers to engage in combat with Germany in the Second World War. Though imperfect, the Nuremberg and Tokyo Tribunals advanced international law and have been regarded as archetypes for the ICC.

In 1948, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, which categorized genocide as a crime under international law and permitted the International Law Committee (ILC) to explore the possibility of creating a permanent international judicial body for trying people for crimes of genocide.<sup>4</sup> However, heightened geopolitical tensions brought on by the Cold War hindered significant progress on reaching an agreement and the consideration of a draft statute was postponed, awaiting the adoption of a definition for the term aggression.<sup>5</sup> In the meantime, the large-scale atrocities committed in the former Yugoslavia and Rwanda had prompted the United Nations to set up two ad hoc tribunals, in 1993 and 1994, respectively.<sup>6</sup> The creation of these tribunals further highlighted the need for a permanent international criminal court. More importantly, they have contributed to the development of international justice and international humanitarian law on which the ICC is based.

### *Court Jurisdiction*

Since becoming fully operational on 1 July 2002, the ICC has investigated 21 cases in nine different situations.<sup>7</sup> The Office of the Prosecutor is currently conducting investigations on crimes allegedly committed in Sudan (for the situation in Darfur), Côte d'Ivoire, the Democratic Republic of the Congo, Uganda, the Central African Republic, Kenya, Libya, and Mali.<sup>8</sup> In addition, the Office of the Prosecutor is currently conducting preliminary analysis in eight situations: Afghanistan, Colombia, the Republic of Korea, Georgia, Guinea, Honduras, Nigeria and Palestine.<sup>9</sup> The Court currently sits in The Hague, Netherlands. A request to the Prosecutor to carry out an investigation may be made by any States Party.<sup>10</sup> The ICC may also initiate proceedings when requested by the UN Security Council, acting under Chapter VII of the UN Charter.<sup>11</sup> However, the Court only has jurisdiction over individuals who are nationals of the State Parties to the *Rome Statute*, unless the United Nations Security Council, whose resolutions are binding on all UN Member States, refers a situation to the Prosecutor or if a State makes a declaration accepting the jurisdiction of the Court.<sup>12</sup> As stated in the ICC Statute, States retain the primary responsibility for the prosecution

---

<sup>1</sup> Benjamin B. Ferencz, *The Coming of International Law and Order*, November 1989, <http://www.benferencz.org/index.php?id=4&article=31> (accessed December 19, 2014).

<sup>2</sup> Coalition for the International Criminal Court, "History of the ICC," <http://www.iccnw.org/?mod=icchistory> (accessed September 1, 2014).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> International Criminal Court, "Frequently Asked Questions," [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx) (accessed September 2, 2014).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

of international crimes.<sup>13</sup> Under the Geneva Conventions of 1949 and Additional Protocol II of 1977, States must prosecute people accused of war crimes before their own national courts or extradite them for trial elsewhere.<sup>14</sup> By virtue of the principle of complementarity, the ICC's jurisdiction is intended to come into play only when a State is genuinely unable or unwilling to prosecute alleged war criminals over which it has jurisdiction.

### *Structure of the Court*

The Court is comprised of four organs: the Presidency, the Judicial Division, the Office of the Prosecutor, and the Registry.<sup>15</sup> Each organ functions in accordance with the Rome Statute. The Presidency has three main areas of responsibility: judicial/legal functions, administration, and external relations.<sup>16</sup> This organ creates and assigns cases to the Chambers, conducts judicial reviews of certain decisions of the Registrar, and arranges Court-wide cooperation agreements and negotiations among States.<sup>17</sup> It also organizes the work of the judicial divisions, although its primary function is to maintain relations with States and other entities and to promote public awareness of the Court.<sup>18</sup> The Presidency is composed of three judges of the Court: President, First Vice-President, and Second Vice-President, who are elected by their fellow judges for a term of three years.

The Judicial Division is comprised of 18 judges, each assigned to one of three trial divisions: the Pre-Trial Division, the Trial Division, and the Appeals Division. The primary purpose of the Pre-Trial Division is to resolve all issues before the trial phase begins by supervising how the Office of the Prosecutor carries out its investigatory and prosecutorial activities. This chamber has the authority to decide whether to issue warrants or confirm charges against a person. They may also decide the admissibility of evidence.<sup>19</sup> The Trial Division is made up of three judges. The major role of the Trial Chamber, expressed in Article 64 of the Rome Statute, is adopting all the necessary procedures to ensure a fair and expeditious trial, conducted with full respect for the rights of the accused with regard for the protection of victims and witnesses.<sup>20</sup> Once an arrest warrant is issued and the Pre-Trial Chamber confirms the charges, the Trial Division determines whether the accused is innocent or guilty. If he or she is found guilty, this division can impose a sentence of imprisonment for a specified number of years not exceeding a maximum of thirty years or life imprisonment and/or a financial penalty.<sup>21</sup> The Appeals Division is comprised of the Presidency and four other judges. It can uphold, reverse, or amend the decisions made in either the Pre-Trial or Trial Divisions. It can also revise a final judgment, conviction, or sentence and also order a new trial before a different Trial Chamber.<sup>22</sup>

The Office of the Prosecutor (OTP) functions independently from the rest of the Court and is composed of three Divisions: the Investigative Division, the Prosecution Division, and the Jurisdiction, Complementarity, and Cooperation Division (JCCD).<sup>23</sup> The Investigative Division is responsible for conducting investigations, including gathering and examining evidence, questioning persons under investigation as well as victims and witnesses.<sup>24</sup> The Prosecution Division has a role in the investigative process, but its principal responsibility is litigating cases before the various Chambers of the Court.<sup>25</sup> The JCCD, with the support of the Investigation Division, assesses and analyzes situations and cases to determine their admissibility and helps secure the cooperation required by the OTP.<sup>26</sup>

---

<sup>13</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>14</sup> Ibid.

<sup>15</sup> International Criminal Court, "Structure of the Court," [http://icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx](http://icc-cpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx) (accessed September 1, 2014).

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>21</sup> Ibid.

<sup>22</sup> International Criminal Court, "Structure of the Court," [http://icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx](http://icc-cpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx) (accessed September 1, 2014).

<sup>23</sup> International Criminal Court, "Office of the Prosecutor Frequently Asked Questions," [http://icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/faq/Pages/faq.aspx#id\\_7](http://icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/faq/Pages/faq.aspx#id_7) (accessed October 27, 2014).

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

The Registry services the Chambers and the Office of the Prosecutor by conducting the non-judicial duties of the administration.<sup>27</sup> The Registrar's function is to help the Court conduct fair and impartial trials by developing effective mechanisms for assisting victims, witnesses, and the defense in order to safeguard their rights under the Rome Statute and the Rules of Procedure and Evidence.<sup>28</sup>

The Assembly of States Parties (ASP) is the Court's governing body and is comprised of the countries that have ratified the Rome Statute. The ICC has been ratified by 122 countries, representing all of the world regions: 34 from Africa, 18 from Asia-Pacific, 18 from Eastern Europe, 27 from Latin America and the Caribbean, and 25 from Western Europe and other States.<sup>29</sup>

The States Parties to the ICC include:

Afghanistan, Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Kenya, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Mongolia, Montenegro, Namibia, Nauru, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Suriname, Sweden, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Tunisia, Uganda, United Kingdom, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, and Zambia.<sup>30</sup>

---

<sup>27</sup> Ibid.

<sup>28</sup> International Criminal Court, "Structure of the Court," [http://icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx](http://icc-cpi.int/en_menus/icc/structure%20of%20the%20court/Pages/structure%20of%20the%20court.aspx) (accessed September 1, 2014).

<sup>29</sup> International Criminal Court, "The States Parties to the Rome Statute," [http://www.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20to%20the%20rome%20statute.aspx](http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20to%20the%20rome%20statute.aspx) (accessed September 1, 2014).

<sup>30</sup> Ibid.

## Case I: Situation in Darfur: The Prosecutor v. Ali Muhammad Ali Abd-Al Rahman (Ali Kushayb)

*“The pursuit of justice is often said to clash with the pursuit of peace. Whatever the theoretical merit of that proposition, the findings of this Commission of Inquiry irrefutably demonstrate that there is no hope for sustainable peace in Darfur without immediate access to justice.”*<sup>31</sup>  
—Louise Arbour, UN High Commissioner for Human Rights

### Introduction

One of the largest and most geographically diverse states in Africa, the Republic of Sudan, is located in northeastern Africa between Egypt and Eritrea, bordering the Red Sea. Sudan has an estimated population of over 35 million. Its official language is Arabic and estimates suggest that over half of the population is Muslim.<sup>32</sup> In theory, Sudan is a federal presidential representative democratic republic with a multi-party system, where the President is head of state, head of government and commander-in-chief.<sup>33</sup> However, it is currently ruled by an authoritarian regime under Omar Hassan Ahmad al-Bashir who came to power by a military coup in 1989. Omar al-Bashir is currently wanted by the ICC facing charges on genocide, crimes against humanity, and war crimes. He is the first sitting head of state to be indicted by the ICC.

On 9 July 2011, the Republic of South Sudan became one of the world’s newest states.<sup>34</sup> Its independence was the result of a six year peace agreement, separating Sudan and South Sudan. However, conflict remains today within and between the two states. For the former part of the 20<sup>th</sup> century, Sudan existed under joint Anglo-Egyptian rule between Britain and Egypt. Although it acted as two distinct entities, an Arab Muslim North and a Black Christian South, Sudan was much more demographically diverse. The northern and southern regions were vastly different in their social, economic, and political makeup. The British sought to modernize the northern region by introducing new technologies and replacing their political system with one more in line with Western liberalism.<sup>35</sup> Because the British relied greatly on Muslim sheiks to help rule, there was a heavy Arab influence as a result. On the contrary, indigenous tribal chiefs ruled the southern region.<sup>36</sup> The Christian missionaries that operated schools and medical facilities played a pivotal role in spreading Christianity amongst the various tribes.<sup>37</sup> Isolated from world trade, the region was stricken with poverty, tribal warfare, and slave trade. Since its independence in 1956, Sudan has been plagued by a succession of civil wars and political instability.

### The Conflict in Sudan

As Sudan prepared to gain independence, Britain and Sudanese rulers in the capital city of Khartoum decided to merge the north and south into a single administrative state without consulting the southern leaders.<sup>38</sup> Tensions flared from Southerners who accused new authorities in Khartoum of trying to impose a new Islamic and Arabic identity. This would give rise to the first civil war (1955-1972) between the Sudanese government and the rebels who demanded greater autonomy for southern Sudan.<sup>39</sup> The war ended with the Addis Ababa Agreement in 1972.<sup>40</sup> This settlement between then President Jaafar Nimeri and Southern rebels granted significant regional autonomy to Southern Sudan on internal issues—though not full independence.<sup>41</sup>

<sup>31</sup> S/PV.5125. United Nations Security Council, *Reports of the Secretary-General on the Sudan*, 16 February 2005.

<sup>32</sup> Library of Congress–Federal Research Division, *Country Profile: Sudan*, December 2004, <http://lcweb2.loc.gov/frd/cs/profiles/Sudan.pdf> (accessed December 26, 2014).

<sup>33</sup> Ibid.

<sup>34</sup> Insight on Conflict, “Sudan: Conflict Profile,” March 2014, <http://www.insightonconflict.org/conflicts/sudan/conflict-profile/> (accessed December 11, 2014).

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Enough Project, “History of the Conflict,” <http://www.enoughproject.org/conflicts/sudans/history-of-the-conflict> (accessed December 11, 2014).

<sup>40</sup> Embassy of the Republic of South Sudan in Washington, DC, “A Short History of South Sudan,” 2011, <http://www.southsudanembassydc.org/PDFs/ShortHistory.pdf> (accessed December 26, 2014).

<sup>41</sup> Ibid.

Longstanding issues became heightened even more when President Nimeiri introduced Sharia Law, a legal framework whereby the public and some private aspects of life are regulated by a legal system based on Islam.<sup>42</sup> Young tribesmen reacted by forming rebel groups to preserve unity in Sudan, one of which was the Sudan People's Liberation Army (SPLA). Together, the rebel groups triggered the second civil war that lasted from 1983 to 2005.<sup>43</sup> To sojourn the fighting, the SPLA fronted yearlong negotiations with President Nimeiri on the issues of self-determination, the allocation of resources, and the role of religion in the state, but nothing ever came of it.<sup>44</sup> In the interim, General Omar al-Bashir staged a military coup to overthrow Nimeiri. When Omar al-Bashir assumed presidency in 1989, no improvements were made and the conflict continued. In 2003, a parallel conflict broke out when the Sudan Liberation Movement/Army (SLM/A, not to be confused with the SPLA) and the Justice and Equality Movement (JEM) rebel groups took up arms against al-Bashir's government, which they accused of marginalizing Darfur's non-Arab population.<sup>45</sup> The war waged on for over two decades, resulting in two and a half million deaths and the displacement of over four million people.<sup>46</sup>

In 2005, the SPLA, the SPLM/A, and Omar al-Bashir's National Congress Party (NCP), signed the Comprehensive Peace Agreement (CPA), which brought an official end to the second civil war.<sup>47</sup> In accordance with the CPA, South Sudan gained independence from Sudan after a six-year interim period established to ensure peace.<sup>48</sup> Crucial concerns such as border demarcation, the sharing of debt, oil revenues, and the use of Sudan's pipeline remained unsettled.<sup>49</sup> In Darfur however, the CPA was rejected altogether and gave way for the highly publicized conflict the international community is faced with today.

### *The Situation in Darfur*

While international attention was focused on establishing peace between the northern and southern parts of Sudan, conflict emerged in Sudan's western region, Darfur. Described by the United Nations as "the world's worst humanitarian crisis" since the 1994 genocide in Rwanda, Darfur has been the site of terrible violence, death, and displacement.<sup>50</sup> In February 2003, two rebel groups—the SLM/A and the JEM—launched a full-scale rebellion against the Sudanese government, which was prompted by ongoing economic marginalization and insecurity.<sup>51</sup> The Sudanese government of President al-Bashir responded by arming nomadic tribes in Darfur, promising land in exchange for their military allegiance. With support from the Sudanese Government's National Congress Party (NCP), these groups formed militias known as the Janjaweed, or "devils on horseback."<sup>52</sup> The Janjaweed launched a campaign of destruction against civilians of similar ethnic background to the rebels.<sup>53</sup> They wiped out entire villages, destroyed food and water supplies, and systematically murdered, tortured, and raped thousands of Darfurians. To date, the situation in Darfur has claimed more than 300,000 lives and displaced over three million from their homes.<sup>54</sup>

The Sudanese military, police, and the Janjaweed were composed of recruited Arabized indigenous Africans and a small number of Bedouin of the northern Rizeigat; the majority of other Arab groups in Darfur remained uninvolved. Ali Muhammad Al Abd-Al-Rahman (Ali Kushayb) was a senior leader in the Janjaweed militia and a

---

<sup>42</sup> Insight on Conflict, "Sudan: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/sudan/conflict-profile/> (accessed December 11, 2014).

<sup>43</sup> Enough Project, "History of the Conflict," <http://www.enoughproject.org/conflicts/sudans/history-of-the-conflict> (accessed December 11, 2014).

<sup>44</sup> Ibid.

<sup>45</sup> Insight on Conflict, "Sudan: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/sudan/conflict-profile/> (accessed December 11, 2014).

<sup>46</sup> Ibid.

<sup>47</sup> Enough Project, "Sudan and South Sudan: History of the Conflict," <http://www.enoughproject.org/conflicts/sudans/history-of-the-conflict> (accessed December 26, 2014).

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> United Nations Refugee Agency (UNHCR), *Statement by António Guterres, United Nations High Commissioner for Refugees, Third Committee of the General Assembly*, 6 November 2013.

<sup>51</sup> Insight on Conflict, "Sudan: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/sudan/conflict-profile/> (accessed December 11, 2014).

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Save Darfur, "Darfur: The Crisis Continues," <http://savedarfur.org/> (accessed October 23, 2014).

member of the Popular Defense Force (PDF).<sup>55</sup> He was regarded as a “mediator” between the leaders of the Janjaweed militia and the Sudanese government. Ali Kushayb issued orders to the Militia commanding the armed forces to rape, kill, torture, pillage and loot residents, and commit other inhumane acts against civilians.<sup>56</sup> The crimes allegedly took place between August 2003 and March 2004.<sup>57</sup> Sudanese forces and Janjaweed militia attacked hundreds of villages throughout Darfur and committed vile acts including rape and murder. Over 400 villages were completely destroyed and millions of civilians were forced to flee their homes.<sup>58</sup> Although the Sudanese government denied any and all involvement in the atrocities, the international community felt the urgent need to investigate.

## **ICC Investigations and Findings**

### *Court Jurisdiction*

On 18 September 2004, the Security Council adopted resolution 1564, requesting the establishment of an international commission of inquiry “to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.”<sup>59</sup> In pursuant of Security Council resolution 1564, former UN Secretary-General Kofi Annan established the International Commission of Inquiry on Darfur.<sup>60</sup> The Commission assembled in Geneva and began its work on 25 October 2004, reporting to the Secretary-General three months later.<sup>61</sup> The International Commission of Inquiry on Darfur determined:

*The alleged crimes that have been documented in Darfur meet the thresholds of the Rome Statute as defined in Articles 7 (1), 8 (1) and 8 (f). There is an internal armed conflict in Darfur between the governmental authorities and organized armed groups. A body of reliable information indicates that war crimes may have been committed on a large-scale, at times even as part of a plan or a policy. There is also a wealth of credible material which suggests that criminal acts were committed as part of widespread or systematic attacks directed against the civilian population, with knowledge of the attacks. In the opinion of the Commission therefore, these may amount to crimes against humanity.*<sup>62</sup>

After deeming this situation “a threat to international peace and security,” the Security Council referred the case to the ICC Prosecutor on 31 March 2005 through resolution 1593.<sup>63</sup> This marks the first time a situation has been referred to the ICC Prosecutor from the Security Council. In June 2005, the ICC took the first step in ending impunity in Darfur by launching investigations into human rights violations in Darfur.<sup>64</sup> The Council decided that the Sudanese government and all other parties involved in the conflict in Darfur would cooperate fully with the Court and Prosecutor, providing them with any necessary assistance.<sup>65</sup> However, the Sudanese government has repeatedly refused to cooperate with the investigations and requests from the Court.

---

<sup>55</sup> The Hague Justice Portal, “Ali Muhammad Al Abd-Al-Rahman (Ali Kushayb),” <http://www.haguejusticeportal.net/index.php?id=8154> (accessed December 15, 2014).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> S/RES/1564. United Nations Security Council, *Report of the Secretary-General on the Sudan*, 18 September 2004.

<sup>60</sup> Ibid.

<sup>61</sup> International Commission of Inquiry on Darfur, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005. [http://www.un.org/news/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/news/dh/sudan/com_inq_darfur.pdf) (accessed November 29, 2014).

<sup>62</sup> Ibid.

<sup>63</sup> S/RES/1593. United Nations Security Council, *Sudan*, 31 March 2005.

<sup>64</sup> International Criminal Court, “Situation in Darfur Sudan,” [http://www.icc-cpi.int/en\\_menus/icc/situations](http://www.icc-cpi.int/en_menus/icc/situations) (accessed September 25, 2014).

<sup>65</sup> Ibid.

### *Charges Against the Accused*

After a thorough investigation by the ICC's Pre-Trial Chamber I, a warrant of arrest was issued for Ali Muhammad Ali Abd-Al Rahaman's (Ali Kushayb) on 27 April 2007, senior leader of the Wadi Salih locality and member of the PDF.<sup>66</sup> The charges against Ali Kushayb are:

- (i) *Twenty-two counts of crimes against humanity: murder (Article 7(1)(a)); deportation or forcible transfer of population (Article 7(1)(d)); imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (Article 7(1)(e)); torture (Article 7(1)(f)); persecution (Article 7(1)(h)); and inhumane acts of inflicting serious bodily injury and suffering (Article 7(1)(k));*
- (ii) *Twenty-eight counts of war crimes: violence to life and person (Article 8(2)(c)(i)); outrage upon personal dignity in particular humiliating and degrading treatment (Article 8(2)(c)(ii)); intentionally directing an attack against a civilian population (Article 8(2)(e)(i)); pillaging (Article 8(2)(e)(v)); rape (Article 8(2)(e)(vi)); and destroying or seizing the property (Article 8(2)(e)(xii)).<sup>67</sup>*

### *Application of International Criminal Law*

According to Article 21, the Rome Statute the Elements of Crimes and the Rules of Procedure and Evidence are the primary sources of international law for cases tried by the ICC.<sup>68</sup> They will serve as the main source when deciding whether the alleged crimes that have been documented in Darfur meet the thresholds as defined by Articles 7 and 8, crimes against humanity and war crimes, respectively. The second set of sources under Article 21 comprises treaties, principles and rules of international law, including those of the law of armed conflict.<sup>69</sup> Previous judgments from tribunals and former ICC cases provide a sound basis for interpretations of the Articles and international criminal law (ICL). Domestic laws make up the final source in the pyramidal hierarchy, provided they are not inconsistent with the Statute, international law, or internationally recognized standards.<sup>70</sup>

### *Legal Instruments and Documents*

Although ICL traces back to the 1907 Hague Convention, the first international justice systems were put into place in the aftermath of the Second World War, beginning with the International Military Tribunal (IMT) in Nuremberg (1945-46).<sup>71</sup> With the purpose of bringing Nazi war criminals to justice, the Nuremberg trials represent a milestone in the development of international law and serve as an important precedent to instances of genocide and other crimes against humanity. Article 6 of the Charter of the Nuremberg International Military Tribunal established the legal basis for trying individuals accused of 'crimes against peace,' 'war crimes,' and 'crimes against humanity.'<sup>72</sup> The Tribunal's firm affirmation of direct liability has become a foundational statement in ICL: "crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced . . . individuals have international duties which transcend the national obligations of obedience imposed by the individual state."<sup>73</sup>

The findings at Nuremberg directly led to the United Nations Genocide Convention (1948) and Universal Declaration of Human Rights (1948), as well as the Geneva Convention on the Laws and Customs of War (1949).<sup>74</sup> In addition, the IMT supplied a useful precedent for the trials of Japanese war criminals in Tokyo (1946-48), the 1961 trial of Nazi leader Adolf Eichmann (1960-62), and the establishment of tribunals for the more recent war

<sup>66</sup> ICC-02/05-01/07. International Criminal Court Pre-Trial Chamber I, *Warrant of Arrest for Ali Kushayb*, 27 April 2007.

<sup>67</sup> Ibid.

<sup>68</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> International Committee of the Red Cross, "The evolution of individual criminal responsibility under international law," 30 September 1999, <https://www.icrc.org/eng/resources/documents/misc/57jq2x.htm> (accessed December 19, 2014).

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

crimes committed in the former Yugoslavia (1993) and Rwanda (1994).<sup>75</sup> Furthermore, the International Law Commission (ILC), a subsidiary organ of the UN General Assembly, codified the principles of international law recognized by both the Charter and Judgment of the Nuremberg Tribunal, establishing a code of individual criminal responsibility.<sup>76</sup> Pursuant to Principle IV, “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.”<sup>77</sup>

ICL imposes legal obligations upon states and armed groups during armed conflicts to reduce unnecessary suffering and to protect civilians and other non-combatants. The Geneva Conventions of 1949 set out an elaborate framework of rules that are applicable to international armed conflict that defined the basic, wartime rights of prisoners (civil and military), established protections for the wounded, and recognized protections for the civilians in and around war-zones.<sup>78</sup> Moreover, the Geneva Convention defines the rights and protections afforded to non-combatants, in this case, the Sudanese people.<sup>79</sup> Protocol II to the Geneva Conventions of 1977 also evokes the protection of human rights law for the human person.<sup>80</sup> Although Sudan has not ratified the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), most of its provisions, including those concerned with protecting the civilian population, are considered reflective customary international law. Thus, provisions found within these Conventions may be applied, even if they are not directly found in the Rome Statute.

### *Crimes Against Humanity: Case Law from International Criminal Tribunals*

The definition of crimes against humanity has evolved over the years with the addition of specific punishable acts that were not in the original provisions. The Statutes of two ad hoc Tribunals have had an important effect on the application of international criminal and humanitarian law. The International Criminal Tribunal for the former Yugoslavia (ICTY) was the first major tribunal formed by the international community since the Nuremberg and Tokyo tribunals. The ICTY was set up in 1993 to prosecute major crimes such as grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity during the Yugoslav Wars. For crimes against humanity, the ICTY Statute mandates that the act be “committed in armed conflict, whether international or internal in character, and directed against any civilian population.”<sup>81</sup> Under ICL, the conflict in Darfur is considered a non-international (or internal) armed conflict.

The International Criminal Tribunal for Rwanda (ICTR) was established in 1994 to prosecute those responsible for the Rwandan Genocide and other serious violations of international law in Rwanda.<sup>82</sup> By contrast to the ICTY, the ICTR Statute defines a crime against humanity as an act “committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds.” This definition is closer to the position of the Rome Statute, which requires that a crime against humanity be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>83</sup> Precisely, Article 7 of the Rome Statute defines crimes against humanity as,

*[...]any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c)*

---

<sup>75</sup> International Justice Project, “International Criminal Law Backgrounders,” <http://internationaljustice.idebate.org/international-justice/backgrounders> (accessed December 19, 2014).

<sup>76</sup> Antonio Cassese, United Nations Audiovisual Library of International Law, “Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal,” 2009, [http://legal.un.org/avl/pdf/ha/ga\\_95-I/ga\\_95-I\\_e.pdf](http://legal.un.org/avl/pdf/ha/ga_95-I/ga_95-I_e.pdf) (accessed November 27, 2014).

<sup>77</sup> Ibid.

<sup>78</sup> Advisory Service on International Humanitarian Law, “Additional Protocols to the Geneva Conventions of 1949,” 25 March 2014, <https://www.icrc.org/en/document/additional-protocols-geneva-conventions-1949-factsheet#.VLNHPorF8mc> (accessed December 27, 2014).

<sup>79</sup> Ibid.

<sup>80</sup> No. 17513. United Nations Treaty Series, *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II)*, 8 June 1997.

<sup>81</sup> International Criminal Tribunal for the former Yugoslavia (ICTY), *Updated Statute of the International Criminal Tribunal for the former Yugoslavia*, September 2009.

<sup>82</sup> International Criminal Tribunal for Rwanda (ICTR), *Statute of the International Tribunal for Rwanda*, 8 November 1994.

<sup>83</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

*Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced sterilization, or any other form of sexual violence of comparable gravity.*<sup>84</sup>

The requirement of widespread or systematic practice introduces a threshold in order to exclude random or isolated acts of violence (see *Prosecutor v. Katanga*).<sup>85</sup> A “widespread attack” refers to an attack that affects a high number of victims.<sup>86</sup> Since a numerical count does not exist, it is determined on a case-by-case basis. On the other hand, “systematic” refers to the organized nature of the acts of violence and the recurrence of similar criminal conduct on a regular basis.<sup>87</sup>

Contrary to war crimes, an attack does not necessarily mean a military attack and does not have to occur in relation to armed hostilities or an armed conflict (see *Prosecutor v. Katanga*<sup>88</sup> and *Prosecutor v. Jean-Pierre Bemba Gombo*<sup>89</sup>). Nonetheless, the accused must have knowledge that the offences are part of a systematic policy or of widespread abuses.<sup>90</sup> The mental element (*mens rea*) for crimes against humanity is outlined in Article 7(1) of the Rome Statute. Article 66 further specifies the presumption of innocence, providing that burden of proof rests upon the Prosecutor.<sup>91</sup> As such, the Prosecutor must present upon an unreasonable doubt that Kshayb committed a widespread or systematic attack directed against a civilian population, with intent and knowledge based on the elements of the crimes against humanity.

#### *Crimes of War and the Principle of Distinction*

War crimes are considered the violations of the laws of war for which there is an individual criminally responsible. In contrast to crimes against humanity, elements of war crimes do not include plan, policy, and scale. One single act may constitute a war crime.<sup>92</sup> However, it is unlikely that a single act would meet the gravity threshold in Article 17(1)(d). Article 8 defines war crimes as “grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts ‘not of an international character’ listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale.”<sup>93</sup> Rather, the prosecutor must prove: (1) an armed conflict exists or existed either internally or internationally, (2) the perpetrator had knowledge of the existence of the internal or international armed conflict, and (3) a connection (*nexus*) exists between the act perpetrated and the conflict.

Under the ICC Statute, “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime in international armed conflicts.<sup>94</sup> The principle of distinction between civilians and combatants is recognized as a fundamental principle of international humanitarian law in all armed conflicts. It provides that parties to a conflict must at all times distinguish between civilians and combatants.<sup>95</sup> During armed conflict, all forces must prevent unnecessary suffering, ensure humane treatment of persons in their control, and uphold the distinction between combatants and civilians.<sup>96</sup> Attacks may only be directed against combatants and other military objectives, and not against civilians or civilian objects.

---

<sup>84</sup> Ibid.

<sup>85</sup> ICC-01/04-01/07. International Criminal Court Pre-Trial Chamber I, *Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga*, 5 November 2007.

<sup>86</sup> International Criminal Court, *Elements of Crimes*, 2011 <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed September 27, 2014).

<sup>87</sup> Ibid.

<sup>88</sup> ICC-01/04-01/07. International Criminal Court Pre-Trial Chamber I, *Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga*, 5 November 2007.

<sup>89</sup> ICC-01/05-01/08. International Criminal Court Pre-Trial Chamber II, *Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo*, 15 June 2009.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> No. 17513. United Nations Treaty Series, *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II)*, 8 June 1997.

<sup>96</sup> Ibid.

Attacks that are primarily designed to spread terror among the civilian population are also prohibited.<sup>97</sup> Civilians are protected from attack unless, and for only such time as they take a direct part in hostilities.<sup>98</sup> In occasion of doubt in deciding whether a person is a civilian, that person is considered a civilian.<sup>99</sup> In the case against Ali Kushayb, the Commission collected substantial and reliable material that shows the occurrence of systematic killing of civilians belonging to particular tribes. This material will play a key role in rendering a judgment in the case against Kushayb.

### ***Current Situation of the Case***

The conflict between what is now Sudan and South Sudan are often understood through their historical roots: centuries of exploitation and marginalization by the "Arab" north against the "African" south. Decades of conflict have resulted in the attention of the international community and the ICC. Chapter VII of the United Nations Charter, Security Council resolution 1564, and the Rome Statute of the ICC grant statutory authority to the ICC to hear a variety of cases dealing with violent acts against individuals. This case is a result of the referral from the Security Council in March 2005 after deeming the situation "a threat to international peace and security" in resolution 1593. The Commission reported criminal acts intentionally directed against civilians, including murder, rape and outrages upon the personal dignity of women and girls; persecution; forcible transfers imprisonment; and severe deprivation of liberty among others. With pressure from the UNSC, the victims are optimistic that Ali Kushayb will be prosecuted and brought to justice before the ICC.

Ali Kushayb has been charged with 22 counts of crimes against humanity and 28 counts of war crimes, which will be presented to the Court through legal arguments, evidence, and victim testimony. According to Sudanese authorities, Ali Kushayb was arrested in January 2009 and transferred to Southern Darfur while Sudanese authorities conduct further investigations.<sup>100</sup> The Sudanese government indicated that they would be pursuing trials against war criminals, but did not specify when these trials would take place. On 23 April 2010, the ICC prosecutor Luis Moreno Ocampo reported to the judges of the Court that the Sudanese government was still refusing to hand over Ali Kushayb to the ICC.<sup>101</sup> Since the referral of the case, the OTC continues to monitor instances that could constitute crimes under the Rome Statute.

### ***Committee Directive***

Delegates are responsible for understanding their respective roles in the case of Ali Kushayb, including the measures that may be taken during the Trial Chamber proceedings in accordance with the Rome Statute. While this guide presents the background of the case, delegates should use additional resources to determine the evidence and application of international law. While the burden of proof rests upon the Prosecutor, the Defense Council is equally responsible for ensuring the general rights of the Kushayb, enshrined in Article 67 of the Rome Statute and supplemented by provisions of the Rules of Procedure and Evidence and the Regulations of the Court.<sup>102</sup> Likewise, as the legal representative for the victims, the Victim's Advocate must speak on behalf of the victims by telling their stories (presented as written statements), and establish the damage, loss or injury as a result of the actions by Kushayb. While the Victim's Advocate may essentially help the Prosecutor's case, victims and their counsels do not necessarily focus on bringing elements to prove the guilt/innocence of an accused. The primary purpose is to provide victims the opportunity to state what happened to them (in this simulation, through the Victim's Advocate).

In order to reach a conclusion regarding the criminal liability of Ali Kushayb, delegates must answer the following questions: Did the acts laid out in the charges occur? Were the acts a part of a widespread or systematic attack against the civilian population? Was there an attack? If so, was it widespread or systematic and was it directed against a civilian population? Is Kushayb individually responsible for the acts he is accused of committing? Did he indirectly commit acts of murder and/or persecution? If so, did he have intent to commit the acts; was he aware that

---

<sup>97</sup> International Criminal Court, *Elements of Crimes*, 2011 <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed September 27, 2014).

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> The Hague Justice Portal, "Ali Muhammad Al Abd-Al-Rahman (Ali Kushayb)," <http://www.haguejusticeportal.net/index.php?id=8154> (accessed December 15, 2014).

<sup>102</sup> ICC-BD/01-01-04. International Criminal Court, Regulations of the Court, 26 May 2004, [http://www.icc-cpi.int/NR/rdonlyres/B920AD62-DF49-4010-8907-E0D8CC61EBA4/277527/Regulations\\_of\\_the\\_Court\\_170604EN.pdf](http://www.icc-cpi.int/NR/rdonlyres/B920AD62-DF49-4010-8907-E0D8CC61EBA4/277527/Regulations_of_the_Court_170604EN.pdf) (accessed January 3, 2014).

the acts were committed as part of a widespread or systematic attack? If Kushayb is convicted, the Judges will be responsible for determining punishment and deciding on reparations to the victims.

## Case II. Situation in the Republic of the Ivory Coast: The Prosecutor v. Simone Gbagbo

*“Efforts by both the ICC and the Ivorian government to ensure accountability for the post-election crimes are important in returning the rule of law to Côte d’Ivoire.”*<sup>103</sup>

—Elise Keppler, Human Rights Watch Senior International Justice Counsel

### Introduction

The Ivory Coast, officially the Republic of Côte d’Ivoire, is a West African state bordered by Liberia, Guinea, Mali, Burkina Faso, and Ghana, with coastline along the Gulf of Guinea. It is a democratic republic ruled by a freely elected government with an estimated population of over 22 million.<sup>104</sup> French and Portuguese merchants searching for ivory originally named the region Ivory Coast for its abundance of the natural resource.<sup>105</sup> Since its independence on 7 August 1960, the Ivory Coast has maintained close ties with France.<sup>106</sup> In 1985, the country officially changed its name to Côte d’Ivoire.<sup>107</sup> During its first presidency of Félix Houphouët-Boigny, Côte d’Ivoire was marked by political stability and relative socio-economic prosperity, becoming “one of the most prosperous West African states.”<sup>108</sup> The successful exportation of cocoa (as the top producer world-wide) and coffee was a major factor in its sustainability, allowing the country to achieve prosperity and social development.

However, tensions heightened towards the end of Houphouët-Boigny’s presidency, and the ensuing electoral crisis ultimately steered the country directly through two civil wars. When commodity prices fell in the 1980s, Côte d’Ivoire began to face serious economic and social problems. Following the death of President Houphouët-Boigny in December 1993, the country plunged into a protracted power struggle that spawned intense political instability. His successor, President Henri Konan Bedie, faced massive discontent from citizens as government corruption and mismanagement began to drive steep reductions in foreign aid.<sup>109</sup> In December 1999, Bedie was overthrown by a bloodless military coup led by General Robert Gueï, who promised to hold open elections the following year.<sup>110</sup> The events leading up to the electoral crisis in the Ivory Coast would leave a devastating impact on the security and sustainability of the country for decades to come.

### The Ivory Coast’s Electoral Crisis

Presidential elections were held on 22 October 2000. Although he was defeated by Gbagbo, the candidate of the Ivoirian People’s Front (FPI), Gueï declared himself winner and refused to leave office.<sup>111</sup> After mass protests, Gueï was forced to flee the country while Gbagbo assumed the reins of power.<sup>112</sup> The elections were stained by significant violence and irregularities. Excluded from the elections, the leader of the Rally of the Republicans (RDR), Alassane Dramane Ouattara, called for a re-election.<sup>113</sup> Violence quickly erupted between Gbagbo’s

---

<sup>103</sup> Human Rights Watch, “Côte d’Ivoire: Gbagbo’s ICC Transfer Advances Justice,” 29 November 2011, <http://www.hrw.org/news/2011/11/29/c-te-d-ivoire-gbagbo-s-icc-transfer-advances-justice> (accessed December 21, 2014).

<sup>104</sup> The World Bank, “Data: Côte d’Ivoire,” 2014, <http://data.worldbank.org/country/cote-divoire> (accessed November 28, 2014).

<sup>105</sup> GlobalSecurity, “Ivory Coast Conflict,” 11 November 2011, <http://www.globalsecurity.org/military/world/war/ivory-coast-2007.htm> (accessed October 29, 2014).

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> BBC News Africa, “Robert Gueï: Deposed ruler,” 20 October 2000, <http://news.bbc.co.uk/2/hi/africa/930254.stm> (accessed November 25, 2014).

<sup>111</sup> Insight on Conflict, “Ivory Coast: Conflict Profile,” March 2014, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed on October 29, 2014).

<sup>112</sup> BBC News Africa, “Ivory Coast profile,” 5 November 2014, <http://www.bbc.com/news/world-africa-13287585> (accessed October 29, 2014).

<sup>113</sup> Ibid.

Christian supporters in the south and Ouattara's primarily Muslim followers in the north.<sup>114</sup> Hundreds were killed in the few days that followed before Ouattara called for peace and recognized Gbagbo as president.

In August 2002, President Gbagbo formed a de facto government of national unity that included the RDR party.<sup>115</sup> Under the new Gbagbo regime, the exclusion of northerners in the government and the security sector continued, triggering increased grievances and feelings of marginalization among these groups. In September 2002, Ivorian dissidents and disaffected members of the military led a coup attempt, during which former General Guei was disputably killed.<sup>116</sup> Insurgent groups joined together to form the New Forces (FN) under the command of Guillaume Soro and quickly gained control of the northern 60 percent of the country.<sup>117</sup> By the end of September 2002, the Ivory Coast was in a full-fledged civil war, split between the rebel FN in the north and the government in the south.<sup>118</sup> A series of peace initiatives were adopted over a period of five years, but failed to resolve the conflict.

In January 2003, the Linas-Marcoussis peace accords were signed.<sup>119</sup> However, violence continued as the accords rejected parties who either viewed the rebels as gaining too many concessions or who still wished to see Gbagbo ousted. The Security Council identified the situation in Côte d'Ivoire as a "threat to international peace and security" in the region and subsequently adopted resolution 1479 on 13 May 2003, establishing the United Nations Mission in Côte d'Ivoire (MINUCI).<sup>120</sup> The primary objectives of the political mission included facilitating the implementation of the Linas-Marcoussis Agreement and complementing the operations of the peacekeeping force of the Economic Community of West African States (ECOWAS) and French troops in the country.<sup>121</sup> However, continued fighting and the failure of successive peace accords resulted in the passage of Security Council resolution 1528 on 27 February 2004, establishing the United Nations Operation in Côte d'Ivoire (UNOCI).<sup>122</sup> The Security Council has modified its mandate on a number of occasions to reflect on the evolving situation on the ground and the specific needs of the mission. After many attempts at the peace table, an agreement was finally reached in March 2007 between Gbagbo and Soro with the signing of the Ouagadougou Political Agreement (OPA).<sup>123</sup> The two agreed to reunite the country by holding elections and integrating rebel forces into the national armed forces; although, the election was delayed until 2010.<sup>124</sup>

The presidential elections were intended to bring stability to the country. On 31 October 2010, more than 4.8 million turned out to vote (83.7 percent of the 5.7 million registered voters), including a high turnout of women.<sup>125</sup> Representatives of the candidates, thousands of national observers, political party representatives, and over 400 international observers observed the polls.<sup>126</sup> The presidential elections were held in a generally peaceful and orderly manner. Nevertheless, violent unrest quickly broke out when Gbagbo refused to hand over power to Alassane Ouattara, who was recognized by the international community as the winner of the election. Gbagbo refused to accept the results of the Independent Electoral Commission (CEI) on allegations of voter fraud and intimidation.<sup>127</sup> The unrest quickly spread to the countryside, as Gbagbo used military and security forces to terrorize the supporters of Ouattara. The mounting violence forced the United Nations to continue peacekeeping

---

<sup>114</sup> Ibid.

<sup>115</sup> United Nations Mission in Côte d'Ivoire, "Background (from the first Report of the Secretary-General on Côte d'Ivoire, S/2003/374)," 2004, <http://www.un.org/en/peacekeeping/missions/past/minuci/background.html> (accessed November 28, 2014).

<sup>116</sup> Ibid.

<sup>117</sup> Insight on Conflict, "Ivory Coast: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed on October 29, 2014).

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> United Nations Peacekeeping Missions, "MINUCI: United Nations Mission in Côte d'Ivoire," <http://www.un.org/en/peacekeeping/missions/past/minuci/index.html> (accessed October 22, 2014).

<sup>121</sup> Ibid.

<sup>122</sup> United Nations Peacekeeping Missions, "UNOCI: United Nations Operation in Côte d'Ivoire," <http://www.un.org/en/peacekeeping/missions/unoci/index.shtml> (accessed October 22, 2014).

<sup>123</sup> GlobalSecurity, "Ivory Coast Conflict," 11 November 2011, <http://www.globalsecurity.org/military/world/war/ivory-coast-2007.htm> (accessed October 29, 2014).

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> S/2010/600. United Nations Security Council, *Twenty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire*, 23 November 2010.

<sup>127</sup> Insight on Conflict, "Ivory Coast: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed on October 29, 2014).

operations, despite attempts by Gbagbo to oust them.<sup>128</sup> His wife, Simone Gbagbo, became increasingly involved in the conflict, encouraging and sanctioning her husband's supporters to attack the opposition, often through escalating violence. In March 2011, the Security Council imposed harsh sanctions on Gbagbo, identifying him as the primary aggressor in the crisis.<sup>129</sup> What became known as the Second Ivorian Civil War (2010-2011) ended with the arrest of Laurent Gbagbo and his wife, Simone Edivet Gbagbo, and the inauguration of Alassane Ouattara on 21 May 2011.<sup>130</sup>

The five-month crisis that transpired after the elections resulted in at least 3,000 deaths and the displacement of one million people.<sup>131</sup> Attacks were often carried out along political, ethnic, and religious lines. The International Commission of Inquiry, mandated by the UN, presented a report to the Human Rights Council in June 2011 that found that serious war crimes and crimes against humanity had been committed by both pro-Gbagbo and pro-Ouattara forces.<sup>132</sup> Similar findings have also been released from the Office of the High Commissioner for Human Rights, the UNOCI, the International Federation of Human Rights, Amnesty International, the Group of Ivorian Actors for Human Rights (an Ivorian coalition), and the Human Rights Watch (HRW).<sup>133</sup> The HRM report that detailed serious international crimes committed by both sides implicated 13 military and civilian leaders as among those responsible.<sup>134</sup> Gbagbo was specifically named for his role as commander-in-chief of the armed forces that committed war crimes and crimes against humanity.<sup>135</sup> In November 2011, Gbagbo was handed over to the ICC, where he is currently awaiting trial on four counts of crimes against humanity.<sup>136</sup>

## **ICC Investigations & Findings**

### *Court Jurisdiction*

Côte d'Ivoire accepted the jurisdiction of the ICC in April 2003 by a declaration made in accordance with Article 12(3) of the Rome Statute.<sup>137</sup> In May 2011, the Presidency of Côte d'Ivoire reconfirmed the country's acceptance of this jurisdiction. Following the declaration of Côte d'Ivoire, the ICC Prosecutor conducted a preliminary examination of the situation. He concluded that the criteria to open an investigation are met, and in June 2011, he submitted a request for authorization to open investigations on his own initiative (called investigation *proprio motu*) into the situation in Côte d'Ivoire.<sup>138</sup> The situation marks the first ICC investigation following an Article 12(3) declaration by a non-State Party to the Rome Statute to accept the Court's jurisdiction. Due to the temporal restrictions on the Court's jurisdiction—limited to crimes committed after July 1, 2002 and further constrained in the declaration accepting jurisdiction—the Court can only investigate crimes committed after September 19, 2002 in this case.

Initially, the Pre-Trial Chamber judges granted the Prosecutor's request to open an investigation for crimes allegedly committed by both sides of the conflict in Côte d'Ivoire since 28 November 2010.<sup>139</sup> In February 2012, the Pre-Trial Chamber expanded its authorization to also include alleged crimes committed between 19 September 2002 and 28 November 2010.<sup>140</sup> On 15 February 2013, Côte d'Ivoire ratified the Rome Statute, becoming the ICC's 122<sup>nd</sup> States Party. The Court's jurisdiction has been challenged by the defense on several occasions and criticized by

---

<sup>128</sup> Ibid.

<sup>129</sup> S/RES/1975. United Nations Security Council, *Côte d'Ivoire*, 30 March 2011.

<sup>130</sup> Insight on Conflict, "Ivory Coast: Conflict Profile," March 2014, <http://www.insightonconflict.org/conflicts/ivory-coast/conflict-profile/> (accessed on October 29, 2014).

<sup>131</sup> Human Rights Watch, *They Killed Them Like It Was Nothing*, 5 October 2011, <http://www.hrw.org/reports/2011/10/05/they-killed-them-it-was-nothing> (accessed December 2, 2014).

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> ICC-02/11-01/11. International Criminal Court Pre-Trial Chamber I, *Case Information Sheet: The Prosecutor v. Laurent Gbagbo*, 18 November 2014.

<sup>137</sup> Ibid.

<sup>138</sup> ICC-02/11-14. International Criminal Court Pre-Trial Chamber III, *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire*, 3 October 2011.

<sup>139</sup> Ibid.

<sup>140</sup> ICC-02/11-36. International Criminal Court Pre-Trial Chamber III, *Decision on the Prosecution's provision of further information regarding potentially relevant crimes committed between 2002 and 2010*, 22 February 2012.

many for its failure to prosecute pro-Ouattara supporters though reports by Human Rights groups reveal serious crimes committed by both sides.

### *Charges Against the Accused*

On 7 February 2012, the Prosecution submitted an application for the issuance of a warrant for the arrest of First Lady Simone Gbagbo under Article 58 of the Rome Statute.<sup>141</sup> After assessing the case, the Court Judges issued a warrant of arrest under seal on 29 February 2012.<sup>142</sup> Mrs. Gbagbo is the first woman issued an arrest warrant by the ICC. She is facing four charges of crimes against humanity: murder under Article 7(1)(a), rape and other sexual violence under Article 7(1)(g), persecution under Article 7(1)(h), and other inhumane acts under Article 7(1)(k), which were allegedly committed following the election crisis between 16 December 2010 and 12 April 2011.<sup>143</sup> Mrs. Gbagbo was an apparent member of her husband's inner circle of advisors that were responsible for executing crimes against humanity on their opponents.<sup>144</sup> The warrant of the Court charges her with being an "an indirect co-perpetrator accessory to murder and sponsoring a reign of terror against the opposition" under Article 25(3)(a).<sup>145</sup>

The Pre-Trial Chamber Judges and the Prosecutor consider that there are reasonable grounds to believe:

- (i) *In the aftermath of the presidential elections in Côte d'Ivoire, pro-Gbagbo forces attacked the civilian population in Abidjan and in the West of the country, from 28 November 2010 onwards, targeting civilians who they believed were supporters of the opponent candidate Alassane Ouattara.*
- (ii) *The attacks were widespread and systematic, were committed over an extended time period and over large geographic areas, and followed a similar general pattern.*
- (iii) *The attacks were often directed at specific ethnic or religious communities and left a high number of reported victims.*
- (iv) *A plan existed between Mr. Gbagbo and his inner circle, including Mrs. Gbagbo, and that they were aware that implementing the plan would lead to the commission of the alleged crimes.*
- (v) *Mrs. Gbagbo and other members of Mr. Gbagbo's inner circle exercised joint control over the crimes, and made a coordinated and essential contribution to the realisation of the plan.*<sup>146</sup>

### *Application of International Criminal Law*

The Rome Statute is the governing authority and legal document that gives legitimacy to the International Criminal Court in prosecuting international crimes. The most important provisions in the Simone Gbagbo case, along with all other cases concerning Côte d'Ivoire, are those defining crimes against humanity. They are crimes that demonstrate a lack of regard for basic human rights. The primary challenge in defining crimes against humanity is identifying the precise elements that distinguish these offences from crimes subject exclusively to national laws. A crime against humanity requires that the acts outlined in the statutes take place under defined circumstances.<sup>147</sup> The contextual elements of crimes against humanity, requiring that the underlying crimes are committed as part of a 'widespread or systematic attack against a civilian population pursuant to a State or organizational policy' are meant to ensure the distinction between crimes against humanity and domestic crimes.<sup>148</sup>

---

<sup>141</sup> ICC-02/11-01/12. International Criminal Court Pre-Trial Chamber III, *Warrant of Arrest for Simone Gbagbo*, 29 February 2012.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> ICC-02/11-01/12. International Criminal Court Pre-Trial Chamber I, *Case Information Sheet: Simone Gbagbo*, 15 December 2014.

<sup>147</sup> International Criminal Court, *Elements of Crimes*, 2011 <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed September 27, 2014).

<sup>148</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

## *The Policy Element*

The policy element was first established from the decision in the *Tadic*-case, where the ICTY held that a systematic attack required a “pattern or methodical plan” or “organized pattern of conduct.”<sup>149</sup> Article 7(2)(a) of the Rome Statute stipulates that crimes against humanity are preconditioned on the existence of an attack on a civilian population “pursuant to or in furtherance of a State or organizational policy to commit such attack.”<sup>150</sup> The ICC Elements of Crimes requires that “the State or organization actively promote or encourage such an attack against a civilian population.”<sup>151</sup> In other words, crimes must be carried out through government policy or practiced under the supervision of another accepted *de facto* authority.<sup>152</sup> It is not required, however, that the policy be adopted by the highest level of the state; policies adopted by regional or local state organs could be sufficient (see *Prosecutor V. Tihomir Blaškić*).<sup>153</sup> During the Pre-Trial Chamber, the Judges and the Prosecutor considered that there are reasonable grounds to believe a “plan existed between Mr. Gbagbo and his inner circle, including Mrs. Gbagbo, and that they were aware that implementing the plan would lead to the commission of the alleged crimes.”<sup>154</sup> During the Trial Chamber, the Prosecutor will be required to present evidence to support each of the charges beyond a reasonable doubt.

In order to determine whether a group qualifies as an organization, Article 7(2) of the *Rome Statute* provides the following elements:

- (i) *Whether the group is under a responsible command, or has an established hierarchy;*
- (ii) *Whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population;*
- (iii) *Whether the group exercises control over part of the territory of a state;*
- (iv) *Whether the group has criminal activities against the civilian population as a primary purpose;*
- (v) *Whether the group articulates, explicitly or implicitly, an intention to attack a civilian population; and*
- (vi) *Whether the group is part of a larger group, which fulfils some or all of the above mentioned criteria.*<sup>155</sup>

The Elements of Crimes also establishes that active promotion can also take place “by a deliberate failure to take action.”<sup>156</sup> Under ICL, it currently remains unclear what threshold to apply when establishing whether or not there has been a policy. The ICTY determined as a matter of customary law that it is not required to prove that the attack was carried out as part of a policy or plan; rather, the existence of a policy or plan is relevant in merely establishing that the attack was widespread or systematic, or directed against a civilian population.<sup>157</sup> A central issue in determining the policy element in this case is deciding whether a secret plan existed or whether it can be deduced from the circumstances or inaction. This will be a crucial matter for the Court to decide in the case against Simone Gbagbo.

---

<sup>149</sup> IT-94-1-T. International Criminal Tribunal of the former Yugoslavia, *Prosecutor v. Tadic, Opinion and Judgment*, 7 May 1997.

<sup>150</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>151</sup> International Criminal Court, *Elements of Crimes*, 2011 <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed September 27, 2014).

<sup>152</sup> *Ibid.*

<sup>153</sup> IT-95-14-A. International Criminal Tribunal of the former Yugoslavia, *Prosecutor V. Tihomir Blaškić*, 19 July 2004.

<sup>154</sup> ICC-02/11-01/12. International Criminal Court Pre-Trial Chamber I, *Case Information Sheet: Simone Gbagbo*, 15 December 2014.

<sup>155</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>156</sup> International Criminal Court, *Elements of Crimes*, 2011 <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed September 27, 2014).

<sup>157</sup> IT-95-14-A. International Criminal Tribunal for the former Yugoslavia Appeals Chamber, *Prosecutor V. Tihomir Blaškić*, 19 July 2004.

### *Joint Criminal Enterprise: Case law from The International Tribunal for Sierra Leone*

The concept of ‘joint criminal enterprise’ (JCE) was first established by the ITCY in the Appeals Chamber of the *Tadić* case in 1999.<sup>158</sup> It has since been referred to by a variety of other terms, including “common purpose” and “common plan” liability. Essentially, JCE is a mode of criminal responsibility on a defendant for a crime carried out by other individuals, if that crime was committed as part of a common purpose or plan shared by members of a group to which the accused belonged.<sup>159</sup> The doctrine recognizes that an individual who makes a significant contribution to the carrying out of a crime, does not merely “aid and abet” the crime, but is rather equally responsible as those who actually commit the crime.<sup>160</sup> Although it remains controversial, the development of JCE has been very influential in establishing individual responsibility for crimes against humanity.

Just in the past decade, JCE played a prominent role in the Special Court for Sierra Leone (SCSL). The SCSL is groundbreaking, in that it set precedent for the first body to try a head of state (Charles Taylor) for individual responsibility in the Sierra Leone Civil War. Unlike Yugoslavia, the cases involved here involve political actors involved in armed conflict within their own country, much like the case in Cote d’Ivoire. In the judgment in *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, also known as the “RUF case,” all three defendants were convicted, pursuant to Article 6(1) and (3) of the Court’s Statute on the basis of their roles in a JCE.<sup>161</sup> While the Rome Statute does not explicitly provide JCE as a mode of liability, it can arguably be read into the modes of liability in Article 25(3)(1), which provides for criminal responsibility of anyone who commits a crime jointly with another person and through another person.<sup>162</sup> In addition, it could also be argued that Article 25(3)(d) incorporates JCE as it refers to crimes committed by groups acting with a common purpose.<sup>163</sup> In the case against Simone Gbagbo, the Court must decide whether the defendant is individually responsible for committing acts as part of a widespread or systematic attack against civilians under a JCE.

### *The Admissibility Challenge*

Despite several requests, authorities within Cote d’Ivoire have refused to transfer Simone Gbagbo to the ICC, arguing that she is being tried for similar charges in the national court system. In response to a request by the Court’s judges for an answer to the arrest warrant, Ivorian authorities formally challenged the admissibility of the case before the ICC.

Article 17(1) of the Rome Statute determines that a case is inadmissible if:

- (i) *The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;*
- (ii) *The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;*
- (iii) *The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3;*
- (iv) *The case is not of sufficient gravity to justify further action by the Court.*<sup>164</sup>

---

<sup>158</sup> Allison Marston Danner and Jenny S. Martinez, “Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law,” January 2005, <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1309&context=californialawreview> (accessed December 26, 2014).

<sup>159</sup> *Ibid.*

<sup>160</sup> IT-05-87-PT. International Criminal Tribunal for the former Yugoslavia Trial Chamber, *Prosecutor v. Milan Milutinovic et al*, 22 March 2006.

<sup>161</sup> SCSL-04-15-T. Special Court for Sierra Leone, Trial Chamber, *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, 2 March 2009.

<sup>162</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, 17 July 1998.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

The challenge of admissibility is based on the principle of complementarity, the idea that national and international legal systems are complementary to one another. The admissibility ruling, a standard step for each case, determines whether the ICC can take the case by evaluating the case against certain criteria.<sup>165</sup> In this case, they include whether charges brought against Simone Gbagbo in Côte d'Ivoire substantially relate to the same conduct as that charged by the ICC and, if so, whether the Ivorian authorities are willing and able to try the case.

In February 2014, the Government provided the Pre-Trial Chamber with updated information about the national proceedings and reaffirmed its willingness to hold Simone's trial in Côte d'Ivoire.<sup>166</sup> However, the Prosecutor argues that the domestic criminal proceedings against Mrs. Gbagbo in Côte d'Ivoire do not relate to the crimes alleged in the present Application to the ICC, given that they solely concern "economic" crimes.<sup>167</sup> The Prosecutor also submitted that "based on the scale, nature and manner of the commission of the crimes" and the "impact that these crimes had and continue to have on the victims," the case is of sufficient gravity to justify intervention by the Court.<sup>168</sup> In August 2014, ICC judges sought more information about the case against Mrs. Gbagbo. After a thorough assessment of the documentation provided by Ivorian authorities in October, the Chamber concluded that "Côte d'Ivoire's domestic authorities were not taking tangible, concrete and progressive steps aimed at ascertaining whether Simone Gbagbo is criminally responsible for the same conduct that is alleged in the case before the Court."<sup>169</sup>

### ***Current Situation***

While the case against Gbagbo is the result of efforts by the international community to seek justice for the victims in the aftermath of the 2010 post-election violence, the roots of the conflict date back to the political instability beginning in the early 1990s. The Office's investigations are part of a broader effort to promote justice and reconciliation in Côte d'Ivoire to prevent future violence and commission of crimes. For the first time, a woman stands before the ICC accused of orchestrating and ordering crimes against humanity. Simone Gbagbo is facing four counts of crimes against humanity committed in 2010 and 2011. Her husband and ex-Ivory Coast President Laurent Gbagbo is currently awaiting trial, which is scheduled to open on 7 July 2015 in The Hague.<sup>170</sup> Ivory Coast officials have refused repeated requests to hand over Mrs. Gbagbo, arguing that she should be tried in a domestic court. On 26 December 2014, the domestic trial against Mrs. Gbagbo began in the Ivory Coast, where she is charged for "attempting to undermine the security of the state."<sup>171</sup>

Since the end of the civil war in Côte d'Ivoire in May 2011, efforts to achieve national reconciliation and the rule of law in Côte d'Ivoire have clearly been unsuccessful. The recent confirmation by the ICC that charges against Simone Gbagbo still stand is a step towards providing justice to the hundreds of thousands of victims to the conflict. In December 2014, the Pre-Trial Chamber rejected Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo and reminded Côte d'Ivoire of its obligation to surrender Simone Gbagbo to the Court without delay.<sup>172</sup> After a thorough assessment of the situation, the Chamber concluded that Côte d'Ivoire's domestic authorities were not taking tangible, concrete and progressive steps aimed at ascertaining whether Simone Gbagbo is criminally responsible for the same conduct that is alleged in the case before the Court.

Her indictment reflects perhaps an even more significant change in whom international criminal tribunals deem most responsible for crimes and, therefore, indict. The indictment of Mrs. Gbagbo recognizes that those most responsible for international crimes may not be government leaders or militia commanders, but rather civilians with extraordinary influence. To date, most of the indictments handed down by international courts have focused on

---

<sup>165</sup> Ibid.

<sup>166</sup> ICC-02/11-01/12. International Criminal Court Pre-Trial Chamber I, *Decision on Côte d'Ivoire's request to provide additional documents in support of its challenge to the admissibility of the case against Simone Gbagbo*, 20 February 2014.

<sup>167</sup> ICC-02/11-01/12. International Criminal Court, Pre-Trial Chamber I, *Public redacted version of 'Prosecution's Response to Côte d'Ivoire's Challenge to the admissibility of the case against Simone Gbagbo'*, 9 April 2014.

<sup>168</sup> Ibid.

<sup>169</sup> International Criminal Court, *Summary of Pre-Trial Chamber I's 'Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo'*, 11 December 2014.

<sup>170</sup> ICC-02/11-01/11. International Criminal Court Pre-Trial Chamber I, *Case Information Sheet: The Prosecutor v. Laurent Gbagbo*, 18 November 2014.

<sup>171</sup> BBC News, "Ivory Coast trial of Simone Gbagbo begins," 26 December 2014, <http://www.bbc.com/news/world-africa-30604755> (retrieved January 4, 2014)

<sup>172</sup> International Criminal Court, *Summary of Pre-Trial Chamber I's 'Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo'*, 11 December 2014.

individuals at the top of standard hierarchies of power, such as military commanders, governmental officials, or the leaders of armed rebellions. In contrast, Simone Gbagbo held no official position in government and did not personally commit any of the crimes charged. Yet, the ICC Prosecutor alleges that Simone Gbagbo was part of "Mr. Gbagbo's inner circle," that she "participated in all the meetings during the relevant period," and that she "instructed pro-Gbagbo forces" to commit crimes against individuals who posed a threat to President Gbagbo's power.<sup>173</sup>

### ***Committee Directive***

As a legal matter, the real challenge will be proving Simone Gbagbo's role in the violence that brought such horror to Cote d'Ivoire in 2010. The ICC Prosecutor will have to bring forward evidence—likely difficult evidence to find—that proves Simone Gbagbo was instrumental in developing and implementing a common plan of violence. The Prosecutor bears the burden of proof, and must prove all crimes beyond a reasonable doubt in accordance to ICL. The primary challenge in defining crimes against humanity is to identify the precise elements that distinguish these offences from crimes subject exclusively to national laws. Delegates should place specific attention on the physical and mental elements for the specific offences set out in Article 7(2) of the ICC Statutes and further elaborated in the ICC Elements of Crimes. The Prosecutors will deliver arguments and present evidence to establish the criminal liability of the Simone Gbagbo. The Defense Counsel will play an extraordinary role in ensuring Mrs. Gbagbo is afforded a fair trial, leading to a reasoned judgment. Judges will need to evaluate all aspects of a given case objectively and in an impartial manner. In the case of a conviction, Judges will also need to determine a sentence in addition to the appropriate form of reparation for the victims. The Victims' Advocate will play a pivotal role in advocating on behalf of the victims, detailing their experiences and expressing their specific needs in the aftermath of the conflict.

The Court will only be able to convict the accused in the event that the Prosecutor can prove beyond reasonable doubt that all elements of the crimes against humanity were present. The Trial Chamber may enter a judgment of acquittal on some or all charges, if, at the end of the Prosecution's case, there is insufficient evidence to sustain a conviction on individual responsibility. Though not an exhaustive list, delegates must answer the following questions in establishing individual responsibility: Did an attack directed against a civilian population involving the multiple commission of acts occur? Did a state or organizational policy to commit such attack exist and if so, did it instigate or encourage the alleged crimes? Was Mrs. Gbagbo aware of the factual circumstances that established the character of the act? Were the victims of crimes against humanity non-combatants targeted because of some underlying civilian character? Factors to consider when determining whether an attack is "widespread or systematic" include the number of criminal acts and victims, the means and methods used in the attack, the existence of criminal patterns, and the existence of a plan or policy targeting the civilian population. Furthermore, where the crime is one that was an intended outcome of the joint criminal enterprise, the prosecution must establish that the accused shared with the person who personally perpetrated the crime the state of mind required for that crime.

---

<sup>173</sup> ICC-02/11-01/12. International Criminal Court Pre-Trial Chamber III, *Warrant of Arrest for Simone Gbagbo*, 29 February 2012.

## **Technical Appendix Guide**

### **History of the International Criminal Court (ICC)**

Commentary on the Law of the International Criminal Court (CLICC), “ICL Database & Commentary,” 15 November 2013.

<http://www.iclklamberg.com/index.htm>

This is the main site of the International Criminal Law Database & Commentary. From this website, delegates may access case law from the ICC and a commentary to the *Rome Statute*. The ICL Database & Commentary should serve as a starting point for delegates in gathering legal research in the field of ICL. This site, specifically the case law therein, should be utilized by delegates in writing preliminary opinions, indictments, and legal briefs for the position papers as well as providing arguments for Court proceedings during conference.

International Bar Association, International Criminal Law Manual, 2010,

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=aad84f6f-8058-4a1f-91ce-be0eba974d3e>

This manual not only provides the basic principles of international criminal law, but also the application of legal principles to ensure that alleged perpetrators of mass atrocities are tried in proceedings that fully respect international law and fair trial standards. This resource covers every aspect in ICL to date. It will be extremely helpful for each of the roles simulated by delegates at the Court, specifically in the applications of ICL and in understanding elements beyond the scope of this background guide.

The Open University on YouTube, “Inside the International Criminal Court,” 12 March 2013,

<https://www.youtube.com/playlist?list=PLhQpDGfX5e7D3lamZ6GqfLdXMBJzpbUyl>

This collection of five videos (totaling less than 30 minutes) provides an alternative to traditional text in understanding the history and structure of the ICC. The sequence presents pertinent questions pertaining to the future for international justice and cooperation in holding individuals to accountable to international crimes committed against humanity. The first track outlines the history of the ICC and how it came into being; the second and third tracks provide insight into each of the four departments of the ICC, including the roles of the prosecutor and defense; and the fourth and fifth tracks present case studies of individuals prosecuted by the Court. The videos provide a perfect start for delegates in developing a comprehensive understanding of the ICC.

United Nations Interregional Crime and Justice Research Institute (UNICJRI), *Manual on International Criminal Defence ADC-ICTY Developed Practices*, 2011,

[http://www.icty.org/x/file/About/Reports%20and%20Publications/manual\\_developed\\_practices/ADC\\_ICTY\\_developed\\_practices\\_en.pdf](http://www.icty.org/x/file/About/Reports%20and%20Publications/manual_developed_practices/ADC_ICTY_developed_practices_en.pdf)

This Manual provides an overview of some of the most effective and innovative practices developed by defense counsel in representing the accused before the ICTY. It is intended to be a reference tool for defense counsel defending cases of war crimes, crimes against humanity and genocide before national courts in the former Yugoslavia. In particular, the Manual deals with several problematic issues common to the various jurisdictions of the former Yugoslavia, such as the use and challenging of ICTY-generated evidence, how to conduct an effective plea-bargaining, and how to deal with various kinds of witnesses among other relevant topics.

#### **Case I. Situation in Darfur: The Prosecutor v. Ali Muhammad Ali Abd-Al Rahman (Ali Kushayb)**

24 Hours for Darfur, *Darfurian Voices: Documenting Darfurian Refugees' Views on Issues of Peace, Justice, and Reconciliation*, July 2010.

<http://static.squarespace.com/static/52920ed5e4b04a0741daa89c/t/529224ffe4b049dd0ca09a3f/1385309439460/Darfurian+Voices+-+Report+-+English.pdf>

In this report, the Darfur conflict research organization 24 Hours for Darfur gives Darfuri refugees a voice in the recent conflict. From April through July 2009, the group's researchers surveyed 1,872 Darfuri refugees and 280 community leaders in Chad to learn about their views on issues like the conflict's primary causes, the peace negotiations, and the prospect for peace and justice. The report reveals interesting findings concerning Darfuris' views on the conflict that has driven them from their homes and turned them into refugees.

Faustin Ntoubandi, *Towards Ending Impunity in Darfur: The ICC Arrest Warrant of 27 April 2007*, 2009, [http://www.zaoerv.de/69\\_2009/69\\_2009\\_1\\_b\\_123\\_154.pdf](http://www.zaoerv.de/69_2009/69_2009_1_b_123_154.pdf) (accessed November 25, 2014).

This article analyzes particular aspects of international law, which form the cornerstone on which the arrest warrant of Ali Kushayb is based. These include questions relating to the legality of the warrant, its execution, and its implication for the ICC and all the actors to the Darfur crisis. It covers the origins of the ongoing conflict, the legality of the arrest warrant, the issues surrounding the execution of the warrant, and the impact it may have on the Darfur war as well as on the ICC authority. Delegates will gain insight to the importance and role of the ICC as it directly pertains to the conflict in Darfur and subsequent arrest warrants.

International Committee of the Red Cross (ICRC) Advisory Service on International Humanitarian Law, *War Crimes under the Rome Statute of the International Criminal Court and their sources in International Humanitarian Law—Table*, 31 October 2001.

<https://www.icrc.org/en/document/war-crimes-under-rome-statute-international-criminal-court-and-their-source-international#.VKITUAAA>

This is a comprehensive table that outlines the war crimes over which the ICC has jurisdiction along with the definition of such offences documented in other sources of international humanitarian law (IHL). Not only does the table identify the origin of the terms used in the *Rome Statute's* definitions, it also highlights the differences in wording and content between those definitions and obligations arising under IHL instruments. This is an essential start for delegates in understanding the jurisdiction of the ICC in relation to other international instruments.

International Criminal Court, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, 25 January 2005.

[http://www.icc-cpi.int/NR/rdonlyres/F87E244D-B27C-4A0A-BE1B-D27CECB5649E/278008/Report\\_to\\_UN\\_on\\_Darfur.pdf](http://www.icc-cpi.int/NR/rdonlyres/F87E244D-B27C-4A0A-BE1B-D27CECB5649E/278008/Report_to_UN_on_Darfur.pdf)

Established pursuant to Security Council resolution 1564 (2004), this report describes the terms of reference, methodology, approach, and activities of the Commission and its investigative team. It also provides an overview of the historical and social background to the conflict in Darfur. The report then addresses the Commission's findings in relation to violations of international human rights and humanitarian law by all parties, whether or not acts of genocide have taken place, the identification of perpetrators, and accountability mechanisms. The findings of the report will form the foundation for evidence in this case.

Public Broadcasting Services (PBS), *The Reckoning: The Situation in Darfur*,

[http://www.pbs.org/pov/reckoning/situation\\_in\\_darfur.php](http://www.pbs.org/pov/reckoning/situation_in_darfur.php)

This short video, narrated by ICC Prosecutor Luis Moreno-Ocampo, discusses the Court's investigation into the crimes against humanity perpetrated against the civilian population in Darfur by the Sudanese government. From it, delegates will acquire knowledge about the role of the ICC and the situation in Darfur, Sudan. Prosecutor Luis Moreno-Ocampo explains why it is important to show how the state of Sudan was used to commit crimes against humanity.

## **Case II. Situation in the Republic of the Ivory Coast: The Prosecutor v. Simone Gbagbo**

Amnesty International Côte D'Ivoire Mission Report

<http://www.amnesty.org/en/library/asset/AFR31/001/2011/en/0e4b411c-047a-4a71-8901-da5c50edf80b/afr310012011en.pdf>

This report sets out some of the key findings of the recent Amnesty International research mission to Côte d'Ivoire where they investigated ongoing human rights violations connected with the disputed November 2010 presidential election. Documented violations include extra-judicial executions, ill treatment, arbitrary detention, disappearances and sexual violence including rape. Such findings may serve as significant evidence in this case, specifically in regard to the charges faced by Simone Gbagbo.

Human Rights Watch, *A Long Way from Reconciliation: Abusive Military Crackdown in Response to Security Threats in Côte d'Ivoire*, 19 November 2012.

<http://www.hrw.org/sites/default/files/reports/cotedivoire1112webwcover.pdf>

This report details the brutal crackdown that followed a series of violent attacks on military installations around the country in August that were allegedly committed by militants loyal to former President Laurent Gbagbo. It recalls the grave crimes committed during the 2010-2011 post-election crisis. The report is based on a three-week mission to Abidjan in late August and early September, during the height of the military crackdown. Delegates should use this source in determining evidence against Simone Gbagbo and in deciding appropriate reparations for the victims if she is convicted.

Human Rights Watch, “They Killed Them Like It was Nothing: The Need for Justice for Côte d’Ivoire’s Post-Election Crimes, 5 October 2011.

[http://www.hrw.org/sites/default/files/reports/cdi1011webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/cdi1011webwcover_0.pdf)

This report highlights the war crimes and crimes against humanity committed by forces under both Gbagbo and Ouattara. It documents the horrific human rights abuses that took place from November 2010, when Gbagbo lost an election and refused to yield power, through June 2011. The report also explores the accountability efforts of the Ouattara government to date, including charges brought by the civilian or military prosecutor against at least 118 members of the former Gbagbo camp. While providing an understanding of the events surrounding the case against Simone Gbagbo, could possibly serve as a starting point for the defense in developing its arguments.

International Bar Association, *In the Dock: Defence Rights at the ICC*, May 2011.

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4b9cd7f3-9185-4ebc-b40b-d54b8cc8d01e>

This 27-minute educational film covers a number of key topics to the Court, including the presumption of innocence, fair trial guarantees, and the right to counsel. The film is informed by interviews with practicing defense counsel members, ICL experts, and elected officials of the ICC. In watching this film, delegates are presented with the opportunity to expand their understanding of the workings of the ICC via the narratives of individuals who actually work there. Specifically, it will assist Defense Council in preparing arguments for to the Court.

United Nations Human Rights Council, *Report of the independent, international commission of inquiry on Côte d’Ivoire*, 6 June 2011.

[http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_1328.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1328.pdf)

In 2011, the United Nations Human Rights Council dispatched an independent international commission of inquiry to investigate the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d’Ivoire following the presidential election of November 2010. This is a great resource for delegates in understanding the case against Simone Gbagbo and the violation of human rights and international humanitarian law during the period under consideration.